

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ANANT KUMAR TRIPATI,)
)
)
Plaintiff,)
)
)
vs.) **Case No. CIV-13-547-R**
)
)
PHARMACORR,)
)
)
Defendant.)

REPORT AND RECOMMENDATION

Plaintiff, a pro se Arizona inmate, initiated an action under 42 U.S.C. § 1983. Doc. 1. United States District Court Judge David L. Russell referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). The undersigned granted Plaintiff's motion for leave to proceed in forma pauperis, Docs. 2, 5, but on Defendant's motion, Doc. 15, thereafter recommended vacating that order. Doc. 22. Specifically, the undersigned found that Plaintiff has previously acquired "three strikes" and failed to demonstrate that at the time he filed the complaint he faced an "imminent danger of physical harm." *Id.* (citing 28 U.S.C. § 1915(g)). The Court adopted the recommendation and ordered Plaintiff to pay the full \$400 filing fee no later than twenty days from October 10, 2013, or risk dismissal without prejudice. Doc. 25.

A little over two weeks have passed since Plaintiff's deadline and he has neither paid the filing fee nor given any indication that he intends to do so. Accordingly, the undersigned recommends that Plaintiff's complaint be dismissed without prejudice. *See Smith v. Veterans Admin.*, 636 F.3d 1306, 1308-1309, 1315 (10th Cir. 2011) (affirming the district court's dismissal of complaint where inmate had been denied in forma pauperis status based on his accrual of "three strikes," and he did not thereafter pay the full filing fee); *Clay v. Canadian Cnty. Jail*, 515 F. App'x 763, 763-64 (10th Cir. 2013) (affirming the district court's dismissal without prejudice based on inmate's failure to pay the filing fee).

Plaintiff is advised of his right to file an objection to this report and recommendation with the Clerk of this Court by December 4, 2013, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Plaintiff is further advised that failure to timely object to this report and recommendation waives the right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This report and recommendation terminates the referral.

ENTERED this 14th day of November, 2013.



SUZANNE MITCHELL
UNITED STATES MAGISTRATE JUDGE